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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SHEPHERD INVESTMENTS
INTERNATIONAL, LTD.,

Plaintiff,

v.

PAINCARE HOLDINGS, INC.,

Defendant.

Case No. 07-CIV-9836 (SAS)

**NOTICE OF MOTION FOR
SUMMARY JUDGMENT**

PLEASE TAKE NOTICE that upon the accompanying Memorandum in Support of Plaintiff Shepherd Investments International, Ltd.'s ("Shepherd") Motion for Summary Judgment, the accompanying Plaintiff's Local Rule 56.1 Statement of Undisputed Material Facts, the accompanying Declaration of Christopher G. Green, Esq. in Support of Plaintiff's Motion for Summary Judgment, dated February 1, 2008, and its Exhibits A through E, and upon all the pleadings and proceedings heretofore had herein, Plaintiff hereby moves the Court, pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Civil Rule 56.1, for an order:

- (i) granting summary judgment in favor of Shepherd with respect to its claims for breach of contract and breach of the implied covenant of good faith and fair dealing, as alleged in its Complaint filed on November 6, 2007;

- (ii) directing the Clerk to enter a judgment in favor of Shepherd in the amount of \$538,514, consisting of the following components: (a) liquidated damages in the amount of \$465,000 pursuant to Section 6(b)(iv) of the Agreement; and (b) interest at the rate of 1% per month on all unpaid liquidated damages pursuant to Section 6(b)(iv) of the Agreement, from July 2, 2006 through March 2, 2008, in the amount of \$73,514;
- (iii) awarding Shepherd its costs and attorneys' fees in this action; and
- (iv) awarding such other and further affirmative relief in favor of Shepherd as the Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that counsel for Defendant PainCare Holdings, Inc. ("PainCare"), has represented that PainCare does not intend to file any opposition to this Motion for Summary Judgment.

Dated: New York, New York
February 1, 2008

Respectfully submitted,

ROPES & GRAY LLP

By /s/ Lee S. Gayer

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